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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	
	)	
The Missouri Municipal League	)	CC Docket No. 98-122
The Missouri Association of Municipal Utilities	)	
City Utilities of Springfield	)	
City of Columbia Water & Light	)	
City of Sikeston Board of Utilities	)	
	)	
Petition for Preemption of Section 392.410(7)	)	
of the Revised Statutes of Missouri	)	

COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION

MCI Telecommunications Corporation (MCI) hereby submits its comments in support of the above-captioned petition filed by municipalities and municipally-owned utilities in the State of Missouri (Missouri Municipalities).[1] Section 392.410(7) of the Revised Statutes of Missouri (HB 620) violates section 253(a) of the Telecommunications Act of 1996 (Act) by flatly prohibiting Missouri Municipalities from providing intrastate telecommunications services and telecommunications infrastructure. Municipalities in Missouri and other states are "entities" that are protected from state and local barriers to the provision of telecommunications services pursuant to section 253(a). By precluding municipalities from entering the local market, HB 620 reduces the competitive options available to consumers, and limits telecommunications infrastructure that could be available to competitive local exchange carriers (CLECs).

[1] The Missouri Municipal League, The Missouri Association of Municipal Utilities, City Utilities of Springfield, City of Columbia Water & Light, City of Sikeston Board of Utilities, Petition for Preemption of Section 392.410(7) of the Revised Statutes of Missouri (filed July 8, 1998) (Petition).

I. HB 620 OF THE REVISED STATUTES OF MISSOURI VIOLATES SECTION 253(a) OF THE ACT

HB 620 of the Revised Statutes of Missouri unlawfully prohibits municipalities from entering the local telecommunications markets through the provision of their own telecommunications services, and from making telecommunications infrastructure available to CLECs. This restriction serves to deprive consumers of the benefit of competitive choice. Furthermore, the prohibition on making telecommunications infrastructure available to competitors takes away a critical alternative source of capacity for competitors. The State has essentially cemented CLECs' dependence on the ILECs' bottleneck facilities.[2]

Section 253 of the Act empowers the Commission to preempt state and local legal and regulatory requirements that impede competitive entry.[3] Specifically, 253(a) sets out a direct prohibition to state laws that place limits on the ability of any entity to provide a telecommunications service. The Commission determines whether the regulation "materially limits or inhibits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment."[4] As the Missouri Municipalities have comprehensively demonstrated in their petition, municipalities were not meant to be excluded from the protections of section 253(a). Blanket prohibitions on competitive entry have been

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[2] This is, of course, exactly what the ILECs want. As the Missouri Municipalities demonstrated, the ILECs are in support of HB 620. The ILECs know that, absent alternative facilities for entry into the competitive market, they can control the pace of competitive entry.

[3] Petition at 4.

[4] TCI Cablevision of Oakland County, Inc., Petition for Declaratory Ruling, Preemption and Other Relief Pursuant to 47 U.S.C. §§ 541, 544(e), and 253, FCC 97-331 at ¶ 97 (rel. Sept. 19, 1997).

found to be unlawful and in violation of section 253(a) of the Act.[5] The Commission has previously dealt with state regulations that raise similar issues and consistently concluded that such statutes were unlawful and conflicted with Congress's goal to facilitate local competition. The Commission's rationale in those cases should apply equally here.

The Commission has clearly recognized that state or local requirements that restrict competition purportedly in the name of the public interest may nevertheless be anticompetitive.[6] As the Missouri Municipalities demonstrated, defining the term "entity" to include municipalities and municipally-owned utilities is consistent with the Commission's recent orders, and the decisions of the D. C. Circuit Court of Appeals.[7] For example, in the Pole Attachment Order, the Commission determined that the term "entity" includes government agencies that provide cable or telecommunications services.[8] Further, the Commission included municipalities in determining what "entities" would be affected by its decision in the Pole Attachment Order.[9] Moreover, the D.C. Circuit recently found that the term "entity" must be given its common and

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[5] Public Utility Commission of Texas, Petitions for Declaratory Ruling and/or Preemption of Certain Provisions of the Texas Public Utility Regulatory Act of 1995, FCC 97-346 at ¶¶ 106-107 (rel. Oct. 1. 1997) (Texas).

[6] In the Matter of Silver Star Telephone Company, Inc. Petition for Preemption and Declaratory Ruling, Memorandum Opinion and Order, FCC 97-336, CCB Pol 97-1 (September 24, 1996) (Silver Star).

[7] Petition at 17-20, 28-31.

[8] In the Matter of Implementation of Section 703(e) of the Telecommunications Act of 1996: Amendment of the Commission's Rules and Policies Governing Pole Attachments, CS Docket No. 97-151, Report and Order, FCC 98-20 at ¶ 54 (rel. February 6, 1998) (Pole Attachment Order).

[9] Id. at ¶ 165; see also Petition at 19.

general meaning, because the term is not specifically defined in 47 U.S.C. § 153, which contains the general definitions to be applied throughout the Act.[10] Thus, the case law supports the interpretation that "any entity" includes municipalities.

HB 620 and similar statutes prevent local governments from offering consumers alternative service providers and much needed capacity to competitors. HB 620 is essentially designed to prevent local governments from offering or establishing entities that offer telecommunications equipment, infrastructure, or services to the public in direct competition with the private sector. MCI, through a subsidiary called Pioneer Holdings, is partnering with municipal electric utilities, rural electric cooperatives and other local government entities in a number of Midwestern states to provide an array of telecommunications services, not only to business customers but to residential customers as well. Statutes such as HB 620, however, thwart competitive entry and delivery of competitive choice to consumers.[11]

II. SECTION 253(b) DOES NOT ENCOMPASS STATUTES SUCH AS HB 620

HB 620 is unlawful under section 253(b) of the Act. While Section 253(b) preserves states' ability to impose requirements that are consistent with the public interest, such requirements must be competitively neutral. Because HB 620 is a flat prohibition against competitive entry by municipalities, HB 620 cannot be justified under Section 253(b).

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[10] See Alarm Industry Communications Council v. Federal Communications Comm'n, 131 F.3d 1066 (D.C. Cir. 1997); see also Petition at 28-31.

[11] For example, MCI had been discussing the possibilities of partnering with the City of Lynchburg, Virginia, which had developed its own fiber optic network after unsuccessfully trying to get the incumbent Bell Atlantic to provide the facilities at affordable rates. Unfortunately, the State of Virginia passed a bill prohibiting such arrangements with municipalities, which was also supported by the ILECs.

There is no basis upon which to justify a statute that completely forecloses entry to all competitive providers. Assuming arguendo that this drastic rule is "necessary," and "represents a legitimate exercise of the rights acknowledged by Sections 253(b) to maximize the safety of the traveling public,"[12] the Commission has determined that "Congress envisioned that in the ordinary case, States and localities would enforce the public interest goals delineated in section 253(b) through means other than absolute prohibitions on entry . . . ."[13] The State cannot ignore or misconstrue these requirements. For example, in Texas, the Commission stated that "[municipalities] can bring significant benefits by making additional facilities available for the provision of competitive services."[14] The Commission further stated that any concerns regarding regulatory bias could be resolved "through measures that are much less restrictive than an outright ban on entry, permitting consumers to reap the benefits of increased competition."[15]

HB 620 only serves to secure the ILECs' monopoly status in the market.[16] Local governments are in key positions to assess the needs of consumers and ensure that quality, affordable telecommunications services are available to their constituency. If anything, the statute actually places the public interests of consumers in jeopardy by potentially limiting their

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[12] Petition at 5.

[13] Classic Telephone, Inc., Petition for Preemption, Declaratory Ruling and Injunctive Relief, 11 FCC Rcd 13082, at ¶ 38 (1996).

[14] Texas, para. 190.

[15] Id.

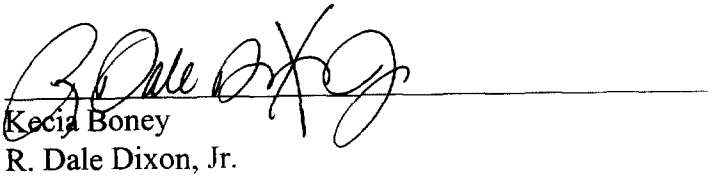
[16] In Silver Star, the Commission recognized that the actions in Wyoming did not warrant an exception under 253(b), and recognized that the provisions included in the state law only served to protect and preserve the incumbent's place in the market. Silver Star at ¶ 42.

choice of a local service provider.[17] MCI and other innovative competitors can partner with municipalities, and, because of their competitive entry, help to drive rates to an affordable level. Similarly, municipalities can enter the market on their own. The objective of the Act's section 253(b) is to assure the establishment of a competitively fair marketplace that does not accord any special treatment to the incumbent by unfairly restricting competitive entry by *any entity*.

CONCLUSION

For the foregoing reasons, the Commission should preempt Section 392.410(7) of Revised Statutes of Missouri.

Respectfully submitted,
MCI TELECOMMUNICATIONS CORPORATION



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[17] This is especially true in areas like the City of Lynchburg, Virginia, where an incumbent has refused to provide needed services, has delayed making them available, or is willing to provide them but only at very high rates.

CERTIFICATE OF SERVICE

I, Lonzena Rogers, do herby certify that on this thirteenth day of August, 1998, I served by first-class United States mail, postage paid, a true copy of the forgoeing of Reply Comments, upon the following:

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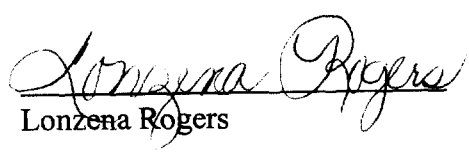

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*Hand Delivered